

COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
**2010 CONFLICT OF INTEREST CODE
BIENNIAL REVIEW REPLY FORM**

2010 AUG 12 PM 1 15

THOMAS J. PASTUSZKA
CLERK OF THE BOARD
OF SUPERVISORS

Contact Person: Brian Marshall Telephone Number: 619-668-5700

Name of Agency: La Mesa-Spring Valley School District

Mailing Address: 4750 Date Avenue, La Mesa, California 91942

This agency has reviewed its conflict of interest code and has determined that:

☒ **Amendments are necessary:** (Attach Amended Code)
(Check all that applies)

☒ Include new positions (including consultants) which must be designated

☒ Revise the titles of existing positions

☐ Delete titles of positions that have been abolished

☐ Delete positions that manage public investments

☒ Revise disclosure categories

☐ Other _____

☐ **No amendments are necessary.** Our agency's code accurately designates all positions which make or participate in the making of governmental decisions; the disclosure assigned to those positions accurately requires the disclosure of all investments, business positions, interests in real property and sources of income which may foresee-ably be affected materially by the decision made by those designated positions; and the code includes all other provisions required by Government Code Section 87302.

Signature of Chief Executive Officer: Brian Marshall

Date: 8/10/10

You must complete this report regardless of how recently your code was approved or amended. **Please return this report no later than August 31, 2010 to:**

**Clerk of the Board of Supervisors
(Conflict of Interest Code)
1600 Pacific Highway, Room 402
San Diego, CA 92101**

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date 10/19/10 Minute Order No. 9
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
Deputy Clerk

CONFLICT OF INTEREST

Incompatible Activities

Governing Board members shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1126)

Conflict of Interest Code

The district's conflict of interest code shall be comprised of the terms of 2CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even-numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated by changed circumstances, such as the creation of new designated positions, amendments or revisions, the changed code shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the district shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (2 CCR 18700)

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

Financial Interest

Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)

CONFLICT OF INTEREST (continued)

A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty
2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board
3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091
4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records
6. That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records
7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records
8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real

CONFLICT OF INTEREST (continued)

estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

Disqualification for Board Members Who Manage Public Investments

A Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

CONFLICT OF INTEREST (continued)

1. Publicly identify the financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required. (Government Code 87105)
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR 18702.5)
3. Leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. (Government Code 87105)

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during the consent calendar. (2 CCR 18702.5)

(cf. 3430 - Investing)

The Board member may speak on the issue during the time that the general public speaks on the issue. The Board member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)

If the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. The Board member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the Board's decision. (2 CCR 18702.5)

Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

CONFLICT OF INTEREST (continued)

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except as described in Government Code 89506.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

Honoraria

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89501, 89502)

The term *honorarium* does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade or profession unless the sole or predominant activity of the business, trade or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

CONFLICT OF INTEREST (continued)

**APPENDIX
DESIGNATED POSITIONS/DISCLOSURE CATEGORIES**

1. Persons occupying the following positions are designated employees in **Category 1**:

Governing Board Members
Superintendent of Schools
Assistant/Associate Superintendent
Supervisor, Purchasing

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
 - (1) Are engaged in the acquisition or disposal of real property within the district
 - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
 - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying the following positions are designated employees in **Category 2**:

All Directors

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

CONFLICT OF INTEREST (continued)

3. It is the policy of the Governing Board that an employee's outside employment activity or enterprise shall not involve the use for private gain or advantage of district time, facilities, equipment, supplies, or the prestige or influence of an employee's position with the district.

Accordingly, to avoid any possible conflict of interest, the Board also specifically directs:

- a. In any outside employment activity or enterprise for private gain, employees shall not use their position with the district to advance their financial interests.
 - b. In any outside employment activity or enterprise for private gain, employees shall not actively solicit business from any district students, parents, or employees.
 - c. In preparing referral lists of services for parental or general district use, district personnel shall not knowingly list names of district employees or any enterprise in which they own an interest.
4. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18701)

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party

CONFLICT OF INTEREST (continued)

- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18701)

Legal Reference: (see next page)

CONFLICT OF INTEREST (continued)

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices*

35233 *Prohibitions applicable to members of governing boards*

35239 *Compensation for board members in districts under 70 ADA*

GOVERNMENT CODE

1090-1098 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91015 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition of designated employee*

82028 *Definition of gifts*

82030 *Definition of income*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

91000-91014 *Enforcement*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission, especially:*

18702.5 *Public identification of a conflict of interest for Section 87200 filers*

COURT DECISIONS

Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th. 655

Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

86 *Ops. Cal. Atty. Gen.* 138 (2003)

85 *Ops. Cal. Atty. Gen.* 60 (2002)

82 *Ops. Cal. Atty. Gen.* 83 (1999)

81 *Ops. Cal. Atty. Gen.* 327 (1998)

80 *Ops. Cal. Atty. Gen.* 320 (1997)

69 *Ops. Cal. Atty. Gen.* 255 (1986)

68 *Ops. Cal. Atty. Gen.* 171 (1985)

65 *Ops. Cal. Atty. Gen.* 606 (1982)

Management Resources:

WEB SITES

Fair Political Practices Commission: <http://www.fppc.ca.gov>

BYLAWS OF THE BOARD9270 Conflict of Interest

Board members shall not be financially interested in any contract made by the Board (unless the board member has an existing employment contract) or any contract made acting in their capacity as Board member.

If a Board member has remote interest in a contract considered by the Board, he/she shall declare that interest and refrain from debating or voting on the matter. Any decision by the Board shall be made without the Board member's vote.

Remote interest shall be defined pursuant to Government Code 1091. Exceptions to interest in contracts shall be governed by Government Code 1091.5.

In any situation where an appearance of conflict of interest exists, although a conflict in terms of the law does not actually exist, it is advisable that the board member abstain. It is also advisable legal counsel be consulted.

Legal Reference:	Education Code	
	35233	Prohibitions Applicable to Members of Governing Boards of School Districts
		35235 Cases Where Justifying Circumstances Not Applicable
	35236	Contract Between District and Member's Spouse or Child
	Government Code	
	1090 et seq.	Prohibitions Applicable to Specified Officers
	82028	Gifts
	82030	Income
	82033	Interest in Real Property
	82034	Investment
	87100 et seq.	Conflict of Interest
	87200 et seq.	Disclosure
	87300 et seq.	Conflict of Interest Codes
	91000 et seq.	Enforcement

Revised: 9/5/95

LA MESA-SPRING VALLEY SCHOOL DISTRICT - REGULATION

BYLAWS OF THE BOARD

9270 Conflict of Interest

The Political Reform Act, Government Code Section 81000, et. Seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Governing Board adopts by reference the conflict of interest regulations of the Fair Political Practices Commission.

Designated Employees

Designated employees shall file statements of economic interests with the San Diego County Board of Supervisors, which shall make the statements available for public inspection and reproduction. All members of the Governing Board and the following employees are designated as identified employees for purposes of filing statements of economic interest:

Superintendent
Assistant Superintendent, Business

Designated employees must report:

1. Interest in real property located entirely or partly within District boundaries, or within two miles of District boundaries or of any land owned or used by the District. Such interest includes any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
2. Investments or business positions in or income from sources which:
 - a) are engaged in the acquisition or disposal of real property within the District,
 - b) are contractors or subcontractors which are or have been within the past two years engaged in work or service of the type used by the District, or
 - c) manufacture or sell supplies, books, machinery, or equipment of the type used by the District.

All Employees

It is the policy of the Governing Board that an employee's outside employment activity or enterprise shall not involve the use for private gain or advantage of District time, facilities, equipment, supplies, or the prestige or influence of an employee's position with the District.

LA MESA-SPRING VALLEY SCHOOL DISTRICT - REGULATION

BYLAWS OF THE BOARD

9270 Conflict of Interest (Cont.)

Accordingly, to avoid any possible conflict of interest, the Board also specifically directs:

1. In any outside employment activity or enterprise for private gain, employees shall not use their position with the District to advance their financial interests.
2. In any outside employment activity or enterprise for private gain, employees shall not actively solicit business from any District students, parents, or employees.
3. In preparing referral lists of services for parental or general District use, District personnel shall not knowingly list names of District employees or any enterprise in which they own an interest.

Legal Reference: Government Code Section 81000, et seq.

Adopted: 9/5/95